

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: March 4, 2003

Opposition No. 91124361

BIG O TIRES, INC.

v.

GRABER PRODUCTS, INC.

Cheryl Goodman, Interlocutory Attorney:

On January 10, 2003, the Board vacated default judgment due to applicant's filing of consented motions to extend its time to respond to the Board's notice of default (which allowed applicant time in which to show cause why default judgment should not be entered), granted those motions to extend, and allowed applicant thirty days in which to respond to the notice of default.

Subsequently, applicant's December 5, 2002, response to the show cause order was associated with the file. In its response, applicant indicates that it did not file a response to the notice of opposition because it never received the notice of opposition. Applicant also indicates that the parties are currently attempting to settle the matter.¹

¹ Applicant's counsel filed with the PTO a change of correspondence address for applicant on September 24, 2001. The

Inasmuch as non-receipt of the notice of opposition evidences good cause for failing to file an answer, notice of default is set aside. The notice of opposition is remailed herein, and as indicated below, applicant's time to answer will be reset in the event that applicant's amendment to the application does not resolve the parties' dispute.

The Board will now consider applicant's amendment to its application² filed in connection with its response to the notice of default. Applicant has indicated opposer's consent thereto.

By the proposed amendment applicant seeks to change the identification of goods **from** "trailer hitch mounted vehicle racks for sporting equipment or luggage" **to** "trailer hitch mounted vehicle racks for sporting equipment or luggage sold through specialty bicycle retailers."

Inasmuch as the amendment is clearly limiting in nature as required by Trademark Rule 2.71(a), and because opposer consents thereto, it is approved and entered. See Trademark Rule 2.133(a).

If this resolves the dispute herein, opposer is allowed until THIRTY DAYS from the mailing date of this order to file a withdrawal of the opposition, failing which the

Board notes that the institution order was properly addressed to applicant's counsel at this new address.

² Application Serial No. 75/867,832 was revived on February 27, 2003.

opposition will go forward on the application as amended at which time applicant's time to answer will be reset as will discovery and trial dates. See Trademark Rule 2.106(c).